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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,433	02/12/2004	Scott McKenna	19712-057001	4776

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EXAMINER	
CARTER, CANDICE D	
ART UNIT	PAPER NUMBER
3629	
MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/777,433	MCKENNA, SCOTT	
	Examiner	Art Unit	
	CANDICE D. CARTER	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4 and 6-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4 and 6-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/20/2008 1/4/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The following is a Second Non-Final Office Action in response to communications received on March 10, 2008. Claim 1, 4, and 5 are currently amended. Claims 7-12 are original. Claims 13-22 have been added. Claims 2, 3, and 6 are cancelled. Therefore, Claims 1, 4, 6, and 7-22 are pending and have been addressed below.

Terminal Disclaimer

The terminal disclaimer filed on March 10, 2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 5, and 8-15 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over MontanaMills.com (2003) in view of Price (2001) and further in view of Christensen (2002).

As per claim 1, MontanaMills.com discloses "A method for operating a bakery cafe, comprising:

Mixing dough for use in baking artisan breads in a fresh dough facility that is positioned behind a partial-wall adjacent to a customer area, the partial-wall having a transparent portion through which the fresh dough facility is visible and being limited in height to allow conversations between a customer within the customer area and a baker operating within the fresh dough facility" (Visit Your Local Village Bakery; ¶ 2; via From the grinding of the flour to the mixing and hand kneading, baking and cooling, you can see Montana Mills Breads come to life all under one roof. The photo on this page displays a partial wall with a transparent portion through which the customers can view the facility. The height of the wall is such that the customers in the photograph can easily have conversations with the bakers);

"baking the artisan breads in an oven viewable from the customer area" (Visit Your Local Village Bakery; ¶ 2; via From the grinding of the flour to the mixing and hand kneading, baking and cooling, you can see Montana Mills Breads come to life all under one roof. If customers can see the baking and cooling then the oven in which the breads are baked must be in an area that is viewable from the customer area);

"moving at least a portion of the baked artisan breads to a display area viewable from the customer area" (Visit Your Local Village Bakery; The photograph shows a display area viewable from the customer area where the breads are stored after they are baked);

“accepting an order directed to purchasing at least one of the baked artisan breads; and fulfilling the order” (Visit Your Local Village Bakery; The photograph shows a woman standing in front of a cashier where she may be able to place and have a bread order fulfilled);

“staging the breads at a food preparation station" (Visit Your Local Village Bakery; The photograph shows breads being prepared at a food preparation station).

MontanaMills.com, however, fails to disclose “shaping and scoring dough”. Price discloses a recipe for cookies in which the dough is shaped and scored (pg. 4, Lavender Shortbread; via to shape cookies, roll dough into balls of the desired size. Score dough into cake pans).

Therefore it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of MontanaMills.com to include “shaping and scoring dough” as disclosed by Price since shaping and scoring dough is a practice commonly used in baking.

The Montana Mills.com and Price combination fails to explicitly disclose “making a café sandwich using at least one of the baked artisan breads". Christensen discloses a bakery café “making a café sandwich using at least one of the baked artisan breads" (pg. 2, ¶ 7 discloses making paninis with the focaccia bread that is baked by Panera).

Therefore, it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include “making a café sandwich using at least one of the baked

artisan breads" as taught by Christensen in order to expand the food products offered by the bakery.

As per claim 13, MontanaMills.com discloses “A method for operating a bakery cafe, comprising:

Mixing dough for use in baking artisan breads in a fresh dough facility that is positioned behind a partial-wall adjacent to a customer area, the partial-wall having a transparent portion through which the fresh dough facility is visible and being limited in height to allow conversations between a customer within the customer area and a baker operating within the fresh dough facility” (Visit Your Local Village Bakery; ¶ 2; via From the grinding of the flour to the mixing and hand kneading, baking and cooling, you can see Montana Mills Breads come to life all under one roof. The photo on this page displays a partial wall with a transparent portion through which the customers can view the facility. The height of the wall is such that the customers in the photograph can easily have conversations with the bakers);

“baking the artisan breads in an oven viewable from the customer area” (Visit Your Local Village Bakery; ¶ 2; via From the grinding of the flour to the mixing and hand kneading, baking and cooling, you can see Montana Mills Breads come to life all under one roof. If customers can see the baking and cooling then the oven in which the breads are baked must be in an area that is viewable from the customer area);

“moving at least a portion of the baked artisan breads to a display area viewable from the customer area” (Visit Your Local Village Bakery; The photograph shows a

display area viewable from the customer area where the breads are stored after they are baked);

"the display area comprises shelving located in an area behind an order entry station opposite the customer area" (Visit Your Local Village Bakery; The photograph shows a display area with shelving that is located in an area behind the counter at which the customer may place an order which is opposite from the customer area on the other side of the counter).

"accepting an order directed to purchasing at least one of the baked artisan breads; and fulfilling the order" (Visit Your Local Village Bakery; The photograph shows a woman standing in front of a cashier where she may be able to place and have a bread order fulfilled);

"staging the breads at a food preparation station" (Visit Your Local Village Bakery; The photograph shows breads being prepared at a food preparation station)

MontanaMills.com, however, fails to disclose "shaping and scoring dough". Price discloses a recipe for cookies in which the dough is shaped and scored (pg. 4, Lavender Shortbread; via to shape cookies, roll dough into balls of the desired size. Score dough into cake pans).

Therefore it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of MontanaMills.com to include "shaping and scoring dough" as disclosed by Price since shaping and scoring dough is a practice commonly used in baking.

The Montana Mills.com and Price combination fails to explicitly disclose "wire baskets". Christensen discloses a bakery café “wire baskets” (pg. 1, ¶ 4).

Therefore, it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include the wire baskets as taught by Christensen since such would be another way to display the fresh baked artisan breads of the bakery.

As per claim 5, MontanaMills.com further discloses “the display area comprises shelving located in an area behind an order entry station opposite the customer area” (Visit Your Local Village Bakery; The photograph shows a display area with shelving that is located in an area behind the counter at which the customer may place an order which is opposite from the customer area on the other side of the counter).

The MontanaMills.com and Price combination, however, fails to explicitly disclose “wire baskets”. Christensen discloses a bakery café having “wire baskets” (pg. 1, ¶ 4).

Therefore, it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the Bakery of the MontanaMills.com and Price combination to include the wire baskets as taught by Christensen since such would be another way to display the fresh baked artisan breads of the bakery.

As per claim 8, the MontanaMills.com, Price and Christenson combination discloses all of the elements of the claimed invention but fails to explicitly disclose “the transparent portion extends downward to a height of approximately three feet to thereby allow children to view actions within the fresh dough facility”.

It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to extend the transparent portion downward to a height of approximately three feet, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 18 recites, equivalent limitations to claim 8 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 9, MontanaMills.com further discloses “the fresh dough facility includes a table positioned adjacent to the partial-wall” (Visit Your Local Village Bakery; The photograph shows a table that is adjacent to the partial wall on which the bakers are preparing the dough).

Claim 19 recites equivalent limitations to claim 9 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 10, MontanaMills.com further discloses, "the fresh dough facility is located in an area adjacent to an entry vestibule of the bakery café” (Visit Your Local Village Bakery; The photograph displays an empty waiting area for customers that is a vestibule area which is located adjacent to the fresh dough facility where the dough is handled by the bakers).

Claim 20 recites equivalent limitations to claim 10 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 11, MontanaMills.com further discloses “the fresh dough facility is located intermediate the entry vestibule and the display area” (Visit Your Local Village Bakery; The photograph displays an empty waiting area for customers that is a vestibule area which is located adjacent to the fresh dough facility where the dough is handled by the bakers. The fresh dough facility is located in between the vestibule area and the area where the breads are displayed).

Claim 21 recites, equivalent limitations to claim 11 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 12, the MontanaMills.com, Price, and Christensen combination discloses all of the elements of the claimed invention but fails to explicitly disclose “the partial-wall has a height of approximately five feet”.

It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include a “partial wall that has a height of approximately five feet", since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 22 recites equivalent limitations to claim 12 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 14, The Montana Mills.com and Price combination fails to explicitly disclose “making a café sandwich using at least one of the baked artisan breads". Christenson discloses a bakery café “making a café sandwich using at least one of the

baked artisan breads" (pg. 2, ¶ 7 discloses making paninis with the focaccia bread that is baked by Panera).

Therefore, it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include “making a café sandwich using at least one of the baked artisan breads" as taught by Christensen in order to expand the food products offered by the bakery.

As per claim 15, MontanMills.com further discloses “staging the breads at a food preparation station" (Visit Your Local Village Bakery; The photograph shows breads being prepared at a food preparation station).

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over MontanaMills.com in view of Price in view of Christensen, as applied to claim 1 above, and further in view of Kelley (2001).

As per claim 4, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "fulfilling the order comprises making a soup bowl using baked artisan bread". Kelley discloses a bakery and casual dining restaurant that “makes a soup bowl using baked artisan bread" (pg. 1, ¶ 3; via soups are served in sourdough bread bowls).

Therefore it would have been obvious to one of ordinary skill in the pertinent art to modify the bakery of the MontanaMills.com and Price combination to include "fulfilling the order comprises making a soup bowl using baked artisan bread" as taught by Kelley since the soup bowl made out of bread would add to the presentation of the soup order.

Claim 16 recites equivalent limitations to claim 4 and is, therefore, rejected using the same art and rationale as set forth above.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over MontanaMills.com in view of Price in view of Christensen, as applied to claim 1 above, and further in view of Jameson (2003).

As per claim 7, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "the customer area comprises customer seating". Jameson discloses a bakery and casual dining restaurant having a "customer area comprising customer seating" (pg. 2; the photograph shows a customer area with customer seating located inside of the restaurant).

Therefore it would have been obvious to one of ordinary skill in the pertinent art to modify bakery of MontanaMills.com to include the customer area with customer seating as disclosed by Jameson since customers may like a place to sit while they are waiting for their orders to be filled.

Claim 17 recites equivalent limitations to claim 7 and is, therefore, rejected using the same art and rationale as set forth above.

Response to Arguments

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Galleyline.com discloses a cafeteria system having a partial wall with a transparent portion behind which food is prepared. Searcy (4,154,027) discloses a store arrangement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CANDICE D. CARTER whose telephone number is (571) 270-5105. The examiner can normally be reached on Monday thru Thursday 7:30am- 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CDC

/John G. Weiss/
Supervisory Patent Examiner, Art Unit 3629